IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.760 OF 2003

Dattatray Lekhaji Pol ...Appellant
Vs.
Daji Mahadu Pol & Ors. ...Respondents

Mr.G.S.Godbole for the Appellant
None for the Respondents.

CORAM: A.S.OKA, J.
DATED: APRIL 18,2006.

P.C.:

1. Heard Shri Godbole for the Appellant. The Appellant is the original Plaintiff. The suit for removal of encroachment was filed by the Appellant which is dismissed by the Trial court and the decree of the trial Court was confirmed by the Appellate Court.

2. The suit is mainly dismissed on the ground that the father of the appellant had filed earlier suit alleging that the respondent No.1 had made encroachment to the extent of 79'X 17' and the said suit abated as a result of failure of the heirs of the father of the Appellant to bring their names on record. The Courts below have found that the present suit is filed by the Appellant for removal of the same encroachment which was the subject matter of the earlier suit. Therefore, the Courts below have held that the present suit was barred by the sub Rule 1 of Rule 9 of Order XXII of the Code of Civil Procedure, 1908.

3. After having perused the impugned Judgments, I find no error in the view taken by the Courts below. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.